

House Bill 308

By: Representatives Benfield of the 85th, Stephenson of the 92nd, Mangham of the 94th, Abdul-Salaam of the 74th, and Thomas of the 55th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure,
2 so as to require a procedure for enhancing eyewitness identification accuracy; to provide for
3 legislative findings; to provide for a short title; to provide for definitions; to provide for
4 general guidelines relating to the development of eyewitness identification protocol and
5 exceptions thereto; to provide for procedures to compose and present photo lineups and live
6 lineups to witnesses; to provide for instructions to be given to witnesses who view lineups;
7 to provide for documentation of identification procedures; to amend Title 35 of the Official
8 Code of Georgia Annotated, relating to law enforcement officers and agencies, so as to
9 provide for training in enhancing eyewitness identification accuracy; to provide for related
10 matters; to provide for effective dates and applicability; to repeal conflicting laws; and for
11 other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

14 The General Assembly finds and declares that eyewitness error is the leading cause of
15 mistaken convictions, and cases of mistaken convictions in this state due to eyewitness
16 misidentification have a resulted in actual perpetrators remaining free to commit more
17 crimes. The General Assembly further finds that the goal of a police investigation is to
18 identify accurately and apprehend the true perpetrators of crimes, and scientific studies of
19 eyewitness memory have demonstrated that eyewitness evidence is, like trace physical
20 evidence, susceptible to contamination if not handled properly. The General Assembly
21 further finds that well-intentioned witnesses and authorities acting in good faith may
22 sometimes inadvertently undermine the accuracy of an identification procedure unless
23 appropriate safeguards are in place. Accordingly, the General Assembly, acutely aware that
24 extensive scientific research has shown that alternative methods of conducting identification
25 procedures greatly enhance eyewitness identification accuracy, declares that this state has a

1 compelling interest in assuring that appropriate eyewitness identification procedures are
2 utilized in this state.

3 **SECTION 2.**

4 This Act shall be known and may be cited as the "Eyewitness Identification Accuracy
5 Enhancement Act."

6 **SECTION 3.**

7 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
8 amended by adding a new chapter to read as follows:

9 "CHAPTER 19

10 17-19-1.

11 As used in this chapter, the term:

12 (1) 'Filler' means a person, not a suspect in the crime under investigation, who is made
13 part of a live lineup or a photograph of a person, not a suspect in the crime under
14 investigation, that is made part of a photo lineup and presented to a witness.

15 (2) 'Live lineup' means a selected group of persons presented to an eyewitness to a crime
16 containing a suspect and several fillers for the purpose of determining whether the
17 eyewitness is able to identify the suspect as the perpetrator.

18 (3) 'Neutral blind administrator' means a person who conducts photo lineup or live lineup
19 procedures while unaware of which person in the lineup is the suspect and which are
20 fillers.

21 (4) 'Photo lineup' means a selected group of photographs of persons presented to an
22 eyewitness to a crime containing a single suspect and several fillers for the purpose of
23 determining whether the eyewitness is able to identify the suspect as the perpetrator.

24 (5) 'Suspect' means a person under investigation for participation in a crime.

25 17-19-2.

26 Prior to January 1, 2008, the Georgia Peace Officer Standards and Training Council shall
27 develop and disseminate to all law enforcement jurisdictions in this state comprehensive
28 policies and procedures and associated training materials for law enforcement agencies
29 regarding photo lineup and live lineup eyewitness identification procedures that implement
30 the requirements set forth in this chapter.

1 17-19-3.

2 (a) All photo lineup and live lineup eyewitness identification procedures conducted by law
3 enforcement officers shall be administered pursuant to the procedures developed pursuant
4 to Code Section 17-19-2 and consistent with the requirements of this chapter.

5 (b) Composition of photo lineups and live lineups shall meet the following requirements:

6 (1) At least five fillers shall be included in a photo lineup, in addition to the suspect, and
7 at least four fillers shall be included in a live lineup, in addition to the suspect;

8 (2) Only one member of a photo lineup or live lineup shall be a suspect, and the
9 remainder shall be fillers who are not suspects but who fit the eyewitness's description
10 of the suspect;

11 (3) In photo lineups, the suspect's photo should resemble his or her appearance at the
12 time of the crime and not unduly stand out;

13 (4) If the eyewitness has previously viewed a photo lineup or live lineup in connection
14 with the investigation of the crime, the fillers in any subsequent lineup shall be different
15 from the fillers used in any prior lineup;

16 (5) In a photo lineup, no writings or information concerning any previous arrest,
17 indictment, or conviction of the suspect shall be visible or made known to the eyewitness;

18 (6) In a live lineup, any identifying actions, such as speech, gestures, or other
19 movements, shall be performed by all lineup participants; and

20 (7) In a live lineup, witnesses shall not be exposed to the members of the lineup before
21 the procedure begins.

22 (c)(1) Whenever possible, the administrator of photo lineup or live lineup eyewitness
23 identification procedure shall be a neutral blind administrator, and no person familiar
24 with the identity of the suspect shall be present during the identification procedure.

25 (2) When it is not feasible to have the procedure administered by a neutral blind
26 administrator, a photo lineup eyewitness identification procedure may be conducted using
27 an alternative method specified and approved pursuant to Code Section 17-19-2. Any
28 alternative method shall be carefully structured to achieve neutral blind administration
29 and prevent the administrator from knowing which photograph is being presented to the
30 eyewitness during the identification procedure. Alternative methods may include:

31 (A) Automated computer programs that can automatically administer the photo lineup
32 directly to an eyewitness and prevent the administrator from seeing which photo the
33 witness is viewing until after the procedure is completed;

34 (B) A procedure in which photographs are placed in folders, randomly numbered, and
35 shuffled and then presented to an eyewitness such that the administrator cannot see or
36 track which photograph is being presented to the witness until after the procedure is
37 completed; or

(C) Other procedures which achieve neutral blind administration.

(d)(1) Live lineup and photo lineup eyewitness identification procedures shall be presented to eyewitnesses using a sequential method, in which a witness is shown photographs or live lineup participants one at a time and not simultaneously. The eyewitness shall be asked to state for each photograph or person whether the individual shown is the perpetrator of the crime, prior to viewing the next lineup photograph or participant.

(2) The administrator shall not offer any comment or feedback to the eyewitness regarding the witness's responses.

(3) If there are multiple eyewitnesses, witnesses shall be presented with the identification procedure separately, and the suspect shall be placed in a different position in the photo lineup or live lineup for each eyewitness.

(4) Under no circumstances shall a sequential presentation be used unless the procedure complies fully with neutral blind administration specified in subsection (c) of this Code section.

17-19-4.

Prior to beginning a photo lineup or live lineup identification procedure, the administrator shall instruct the eyewitness that:

(1) The perpetrator may or may not be among those shown, and the witness should not feel compelled to make an identification;

(2) The administrator is not aware of which person in the lineup is the suspect;

(3) The witness will view individuals one at a time and will be requested to state whether the individual shown is the perpetrator of the crime prior to viewing the next lineup photograph or participant; and

(4) The witness will be presented with the complete lineup, even if the witness makes an identification in the middle of the procedure.

17-19-5.

(a) Each eyewitness shall be given a written copy of the lineup instructions. Each witness shall sign a form indicating that the witness has received, reviewed, and understands the lineup instructions prior to the administration of the identification procedure, and this form shall be kept as part of the law enforcement file.

(b) All eyewitness responses to the lineup participants shall be documented using the witness's own words, either in writing or with audio or video recording.

(c) If the eyewitness makes an identification, after the entire lineup has been presented the administrator shall ask the witness to state in his or her own words how confident he or she

1 is that the person identified is the perpetrator of the crime and make the witness's verbatim
2 response part of the record in the law enforcement file.

3 (d) The administrator shall refrain from any comment or feedback to the eyewitness
4 regarding the witness's statements.

5 (e) If no electronic recording is made, the eyewitness will be asked to review and sign the
6 written record of his or her responses to the identification procedure, including any
7 statements regarding an identification, prior to any feedback or comment from the
8 administrator or others involved in the investigation.

9 17-19-6.

10 Notwithstanding the directives of this chapter, the failure to strictly comply with the
11 provisions of this chapter shall not, in and of itself, preclude testimony and evidence related
12 to eyewitness identification being admissible into evidence; this matter shall be in the sole
13 discretion of the court. In deciding whether testimony and evidence related to eyewitness
14 identification shall be admissible into evidence, the court shall consider whether the
15 provisions of this chapter were complied with, together with any other relevant
16 circumstance."

17 **SECTION 4.**

18 Title 35 of the Official Code of Georgia Annotated, relating to law enforcement officers and
19 agencies, is amended by adding a new Code section to the end of Chapter 1, relating to
20 general provisions for law enforcement officers and agencies, to read as follows:

21 "35-1-15.

22 The Georgia Peace Officer Standards and Training Council and the Georgia Public Safety
23 Training Center shall establish guidelines and procedures for the incorporation of training
24 materials and information in methods for enhancing eyewitness identification accuracy
25 pursuant to Chapter 19 of Title 17 in all courses for which they have responsibility and
26 oversight."

27 **SECTION 5.**

28 (a) This section and Sections 1, 2, 4, and 6 of this Act shall become effective on July 1,
29 2007.

30 (b) Section 3 of this Act shall become effective on January 1, 2008, and shall apply to all
31 photo lineups and live lineups that occur pursuant to offenses that occur on or after January
32 1, 2008.

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- SECTION 6.**
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- All laws and parts of laws in conflict with this Act are repealed.